

(2) Listed transactions

The penalty imposed under subsection (a) with respect to any listed transaction shall be an amount equal to the greater of—

- (A) \$200,000, or
- (B) 50 percent of the gross income derived by such person with respect to aid, assistance, or advice which is provided with respect to the listed transaction before the date the return is filed under section 6111.

Subparagraph (B) shall be applied by substituting “75 percent” for “50 percent” in the case of an intentional failure or act described in subsection (a).

(c) Rescission authority

The provisions of section 6707A(d) (relating to authority of Commissioner to rescind penalty) shall apply to any penalty imposed under this section.

(d) Reportable and listed transactions

For purposes of this section, the terms “reportable transaction” and “listed transaction” have the respective meanings given to such terms by section 6707A(c).

(Added Pub. L. 98-369, div. A, title I, §141(b), July 18, 1984, 98 Stat. 680; amended Pub. L. 99-514, title XV, §§1532(a), 1533(a), Oct. 22, 1986, 100 Stat. 2750; Pub. L. 105-34, title X, §1028(b), (d), Aug. 5, 1997, 111 Stat. 927, 928; Pub. L. 108-357, title VIII, §816(a), Oct. 22, 2004, 118 Stat. 1583.)

AMENDMENTS

2004—Pub. L. 108-357 amended section catchline and text generally, substituting provisions relating to penalty for failure to furnish information regarding reportable transactions for provisions relating to penalty for failure to furnish information regarding tax shelters.

1997—Subsec. (a)(1). Pub. L. 105-34, §1028(d)(2), which directed the substitution of “paragraph (2) or (3), as the case may be” for “paragraph (2)” in subpar. (A) of par. (1), was executed by making the substitution in the concluding provisions of par. (1) to reflect the probable intent of Congress.

Subsec. (a)(2). Pub. L. 105-34, §1028(d)(1), substituted “Except as provided in paragraph (3), the penalty” for “The penalty”.

Subsec. (a)(3). Pub. L. 105-34, §1028(b), added par. (3). 1986—Subsec. (a)(2). Pub. L. 99-514, §1532(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “The penalty imposed under paragraph (1) with respect to any tax shelter shall be an amount equal to the greater of—

- “(A) \$500, or
- “(B) the lesser of (i) 1 percent of the aggregate amount invested in such tax shelter, or (ii) \$10,000.

The \$10,000 limitation in subparagraph (B) shall not apply where there is an intentional disregard of the requirements of section 6111(a).”

Subsec. (b)(2). Pub. L. 99-514, §1533(a), substituted “\$250” for “\$50”.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-357, title VIII, §816(c), Oct. 22, 2004, 118 Stat. 1584, provided that: “The amendments made by this section [amending this section] shall apply to returns the due date for which is after the date of the enactment of this Act [Oct. 22, 2004].”

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable to any tax shelter, as defined in section 6111(d) of this title, interests in which are offered to potential participants after

Secretary of the Treasury prescribes guidance with respect to meeting requirements added by amendments made by Pub. L. 105-34, §1028, see section 1028(e) of Pub. L. 105-34, set out as a note under section 6111 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1532(b) of Pub. L. 99-514 provided that: “The amendment made by this section [amending this section] shall apply to failures with respect to tax shelters interests in which are first offered for sale after the date of the enactment of this Act [Oct. 22, 1986].”

Section 1533(b) of Pub. L. 99-514 provided that: “The amendment made by this section [amending this section] shall apply to returns filed after the date of the enactment of this Act [Oct 22, 1986].”

EFFECTIVE DATE

Section applicable to tax shelters (within the meaning of section 6111 of this title), any interest in which is first sold to any investor after Aug. 31, 1984, see section 141(d) of Pub. L. 98-369, set out as a note under section 6111 of this title.

§ 6707A. Penalty for failure to include reportable transaction information with return**(a) Imposition of penalty**

Any person who fails to include on any return or statement any information with respect to a reportable transaction which is required under section 6011 to be included with such return or statement shall pay a penalty in the amount determined under subsection (b).

(b) Amount of penalty**(1) In general**

Except as otherwise provided in this subsection, the amount of the penalty under subsection (a) with respect to any reportable transaction shall be 75 percent of the decrease in tax shown on the return as a result of such transaction (or which would have resulted from such transaction if such transaction were respected for Federal tax purposes).

(2) Maximum penalty

The amount of the penalty under subsection (a) with respect to any reportable transaction shall not exceed—

(A) in the case of a listed transaction, \$200,000 (\$100,000 in the case of a natural person), or

(B) in the case of any other reportable transaction, \$50,000 (\$10,000 in the case of a natural person).

(3) Minimum penalty

The amount of the penalty under subsection (a) with respect to any transaction shall not be less than \$10,000 (\$5,000 in the case of a natural person).

(c) Definitions

For purposes of this section:

(1) Reportable transaction

The term “reportable transaction” means any transaction with respect to which information is required to be included with a return or statement because, as determined under regulations prescribed under section 6011, such transaction is of a type which the Secretary determines as having a potential for tax avoidance or evasion.

(2) Listed transaction

The term “listed transaction” means a reportable transaction which is the same as, or substantially similar to, a transaction specifically identified by the Secretary as a tax avoidance transaction for purposes of section 6011.

(d) Authority to rescind penalty**(1) In general**

The Commissioner of Internal Revenue may rescind all or any portion of any penalty imposed by this section with respect to any violation if—

(A) the violation is with respect to a reportable transaction other than a listed transaction, and

(B) rescinding the penalty would promote compliance with the requirements of this title and effective tax administration.

(2) No judicial appeal

Notwithstanding any other provision of law, any determination under this subsection may not be reviewed in any judicial proceeding.

(3) Records

If a penalty is rescinded under paragraph (1), the Commissioner shall place in the file in the Office of the Commissioner the opinion of the Commissioner with respect to the determination, including—

(A) a statement of the facts and circumstances relating to the violation,

(B) the reasons for the rescission, and

(C) the amount of the penalty rescinded.

(e) Penalty reported to SEC

In the case of a person—

(1) which is required to file periodic reports under section 13 or 15(d) of the Securities Exchange Act of 1934 or is required to be consolidated with another person for purposes of such reports, and

(2) which—

(A) is required to pay a penalty under this section with respect to a listed transaction,

(B) is required to pay a penalty under section 6662A with respect to any reportable transaction at a rate prescribed under section 6662A(c), or

(C) is required to pay a penalty under section 6662(h) with respect to any reportable transaction and would (but for section 6662A(e)(2)(B)) have been subject to penalty under section 6662A at a rate prescribed under section 6662A(c),

the requirement to pay such penalty shall be disclosed in such reports filed by such person for such periods as the Secretary shall specify. Failure to make a disclosure in accordance with the preceding sentence shall be treated as a failure to which the penalty under subsection (b)(2) applies.

(f) Coordination with other penalties

The penalty imposed by this section shall be in addition to any other penalty imposed by this title.

(Added Pub. L. 108-357, title VIII, §811(a), Oct. 22, 2004, 118 Stat. 1575; amended Pub. L. 110-172,

§11(a)(41), Dec. 29, 2007, 121 Stat. 2488; Pub. L. 111-240, title II, §2041(a), Sept. 27, 2010, 124 Stat. 2560.)

REFERENCES IN TEXT

Sections 13 and 15(d) of the Securities Exchange Act of 1934, referred to in subsec. (e)(1), are classified to sections 78m and 78o(d), respectively, of Title 15, Commerce and Trade.

AMENDMENTS

2010—Subsec. (b). Pub. L. 111-240 amended subsec. (b) generally. Prior to amendment, subsec. (b) specified the amount of the penalty under subsec. (a), both in general and with respect to a listed transaction, in the case of a natural person or in any other case.

2007—Subsec. (e)(2)(C). Pub. L. 110-172 substituted “section 6662A(e)(2)(B)” for “section 6662A(e)(2)(C)”. Effective Date of 2010 Amendment

Pub. L. 111-240, title II, §2041(b), Sept. 27, 2010, 124 Stat. 2560, provided that: “The amendment made by this section [amending this section] shall apply to penalties assessed after December 31, 2006.”

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-240, title II, §2041(b), Sept. 27, 2010, 124 Stat. 2560, provided that: “The amendment made by this section [amending this section] shall apply to penalties assessed after December 31, 2006.”

EFFECTIVE DATE

Pub. L. 108-357, title VIII, §811(c), Oct. 22, 2004, 118 Stat. 1577, as amended by Pub. L. 109-135, title IV, §403(w), Dec. 21, 2005, 119 Stat. 2629, provided that: “The amendments made by this section [enacting this section] shall apply to returns and statements the due date for which is after the date of the enactment of this Act [Oct. 22, 2004] and which were not filed before such date.”

REPORT

Pub. L. 108-357, title VIII, §811(d), Oct. 22, 2004, 118 Stat. 1577, provided that: “The Commissioner of Internal Revenue shall annually report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate—

“(1) a summary of the total number and aggregate amount of penalties imposed, and rescinded, under section 6707A of the Internal Revenue Code of 1986, and

“(2) a description of each penalty rescinded under section 6707(c) of such Code and the reasons therefor.”

§ 6708. Failure to maintain lists of advisees with respect to reportable transactions**(a) Imposition of penalty****(1) In general**

If any person who is required to maintain a list under section 6112(a) fails to make such list available upon written request to the Secretary in accordance with section 6112(b) within 20 business days after the date of such request, such person shall pay a penalty of \$10,000 for each day of such failure after such 20th day.

(2) Reasonable cause exception

No penalty shall be imposed by paragraph (1) with respect to the failure on any day if such failure is due to reasonable cause.

(b) Penalty in addition to other penalties

The penalty imposed by this section shall be in addition to any other penalty provided by law.